

**U.S. District Court
District of Columbia (Washington, DC)
CIVIL DOCKET FOR CASE #: 1:17-cv-01000-CKK**

PROTECT DEMOCRACY PROJECT, INC. v. NATIONAL
SECURITY AGENCY

Assigned to: Judge Colleen Kollar-Kotelly

Cause: 05:552 Freedom of Information Act

Date Filed: 05/24/2017

Jury Demand: None

Nature of Suit: 895 Freedom of
Information Act

Jurisdiction: Federal Question

Plaintiff

**PROTECT DEMOCRACY
PROJECT, INC.**

represented by **Benjamin Leon Berwick**
THE PROJECT DEMOCRACY
PROJECT, INC
15 Main Street
Suite 312
Watertown, MA 02472
(202) 579-4582
Fax: (929) 777-8428
Email: ben.berwick@protectdemocracy.org
ATTORNEY TO BE NOTICED

Michael Patrick Abate
KAPLAN & PARTNERS LLP
710 W. Main St.
4th Floor
Louisville, KY 40202
(502) 540-8280
Email: mabate@kplouisville.com
ATTORNEY TO BE NOTICED

V.

Defendant

NATIONAL SECURITY AGENCY

represented by **Anjali Motgi**
U.S. DEPARTMENT OF JUSTICE
Civil Division, Federal Programs Branch
1100 L St., NW
Suite 12308
Washington, DC 20002
(202) 305-0879
Fax: (202) 616-8470
Email: anjali.motgi@usdoj.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

**OFFICE OF THE DIRECTOR OF
NATIONAL INTELLIGENCE**
TERMINATED: 06/20/2018

represented by **Anjali Motgi**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

DEPARTMENT OF JUSTICE
TERMINATED: 06/20/2018

represented by **Anjali Motgi**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
------------	---	-------------

05/24/2017	<u>1</u>	COMPLAINT against NATIONAL SECURITY AGENCY (Filing fee \$ 400 receipt number 0090-4965090) filed by PROTECT DEMOCRACY PROJECT, INC.. (Attachments: # <u>1</u> Exhibit FOIA Request, # <u>2</u> Exhibit NSA Response, # <u>3</u> Civil Cover Sheet, # <u>4</u> Summons NSA Summons, # <u>5</u> Summons Attorney General Summons, # <u>6</u> Summons USAO-DC Summons)(Abate, Michael) (Entered: 05/24/2017)
05/24/2017		Case Assigned to Judge Colleen Kollar-Kotelly. (sth) (Entered: 05/25/2017)
05/25/2017	<u>2</u>	LCvR 7.1 CERTIFICATE OF DISCLOSURE of Corporate Affiliations and Financial Interests by PROTECT DEMOCRACY PROJECT, INC. (Abate, Michael) (Entered: 05/25/2017)
05/25/2017	<u>3</u>	SUMMONS (3) Issued Electronically as to NATIONAL SECURITY AGENCY, U.S. Attorney and U.S. Attorney General (Attachments: # <u>1</u> Summons, # <u>2</u> Summons, # <u>3</u> Summons)(sth) (Entered: 05/25/2017)
05/26/2017	<u>4</u>	ORDER Establishing Procedures for Cases Assigned to Judge Colleen Kollar-Kotelly. Signed by Judge Colleen Kollar-Kotelly on May 26, 2017. (NS) (Entered: 05/26/2017)
06/05/2017	<u>5</u>	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed as to the United States Attorney. Date of Service Upon United States Attorney on 6/2/2017. Answer due for ALL FEDERAL DEFENDANTS by 7/2/2017. (Abate, Michael) (Entered: 06/05/2017)
06/05/2017	<u>6</u>	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed. NATIONAL SECURITY AGENCY served on 5/31/2017 (Abate, Michael) (Entered: 06/05/2017)
06/15/2017	<u>7</u>	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed on United States Attorney General. Date of Service Upon United States Attorney General 06/01/2017. (Abate, Michael) (Entered: 06/15/2017)
06/30/2017	<u>8</u>	ANSWER to Complaint by NATIONAL SECURITY AGENCY.(Motgi, Anjali) (Entered: 06/30/2017)
07/07/2017		ENTERED IN ERROR.....MINUTE ORDER. The parties shall file a schedule not later than August 11, 2017. Signed by Judge Colleen Kollar-Kotelly on 7/7/2017. (lcckk1) Modified on 7/10/2017 (znmw). (Entered: 07/07/2017)
07/07/2017	<u>9</u>	ORDER. The parties shall file the schedule not later than August 11, 2017. Signed by Judge Colleen Kollar-Kotelly on 7/7/2017. (lcckk1) (Entered: 07/07/2017)
07/07/2017		Set/Reset Deadlines: The parties shall file schedule by 8/11/2017. (dot) (Entered: 07/07/2017)
07/10/2017		NOTICE OF CORRECTED DOCKET ENTRY: Docket Entry Minute Order was entered in error and was refiled as Docket Entry <u>9</u> Order with order attached. (znmw) (Entered: 07/10/2017)
07/24/2017	<u>10</u>	NOTICE of Appearance by Benjamin Leon Berwick on behalf of PROTECT DEMOCRACY PROJECT, INC. (Berwick, Benjamin) (Entered: 07/24/2017)
08/03/2017	<u>11</u>	Consent MOTION to Amend/Correct <u>1</u> Complaint, by PROTECT DEMOCRACY PROJECT, INC. (Attachments: # <u>1</u> Exhibit Amended Complaint, # <u>2</u> Text of Proposed Order Proposed Order)(Abate, Michael) (Entered: 08/03/2017)
08/07/2017		MINUTE ORDER: The Court has received Plaintiff's <u>11</u> Consent Motion to File Amended Complaint. The Motion is GRANTED as the Court finds that "justice so requires." Signed by Judge Colleen Kollar-Kotelly on 8/7/2017. (lcckk1) (Entered: 08/07/2017)
08/07/2017	<u>12</u>	AMENDED COMPLAINT against NATIONAL SECURITY AGENCY, OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE, DEPARTMENT OF JUSTICE filed by PROTECT DEMOCRACY PROJECT, INC..(znmw) (Entered: 08/08/2017)
08/11/2017	<u>13</u>	Joint STATUS REPORT and Proposed Schedule by DEPARTMENT OF JUSTICE, NATIONAL SECURITY AGENCY, OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE. (Motgi, Anjali) (Entered: 08/11/2017)

08/14/2017		MINUTE ORDER: The Court has received the parties' <u>13</u> Joint Status Report. The parties shall abide by the following schedule. By AUGUST 18, 2017, the parties shall file a proposed schedule with respect to Defendants Department of Justice and Office of the Director of National Intelligence. By OCTOBER 25, 2017, the parties shall file a proposed production schedule with respect to Defendant National Security Agency. Signed by Judge Colleen Kollar-Kotelly on 8/14/2017. (lcckk1) (Entered: 08/14/2017)
08/14/2017		Set/Reset Deadlines: Parties proposed schedule due by 8/18/2017. Parties proposed production schedule due by 10/25/2017. (dot) (Entered: 08/15/2017)
08/18/2017	<u>14</u>	ANSWER to <u>12</u> Amended Complaint by DEPARTMENT OF JUSTICE, NATIONAL SECURITY AGENCY, OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE. Related document: <u>12</u> Amended Complaint filed by PROTECT DEMOCRACY PROJECT, INC..(Motgi, Anjali) (Entered: 08/18/2017)
08/18/2017	<u>15</u>	Joint STATUS REPORT and Proposed Schedule by DEPARTMENT OF JUSTICE, NATIONAL SECURITY AGENCY, OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE. (Motgi, Anjali) (Entered: 08/18/2017)
08/28/2017		MINUTE ORDER: The Court has received the parties' <u>15</u> Joint Status Report and Proposed Schedule for Defendants Office of the Director of National Intelligence ("ODNI"), and the Department of Justice ("DOJ"). The parties shall abide by the following schedule. By OCTOBER 10, 2017, ODNI and DOJ will complete the searches for Plaintiff's FOIA requests made to those Defendants. By OCTOBER 25, 2017, the parties will file a joint proposed production schedule with respect to those Defendants. Signed by Judge Colleen Kollar-Kotelly on 8/28/2017. (lcckk1) (Entered: 08/28/2017)
08/28/2017		Set/Reset Deadlines: ODNI and DOJ will complete the searches by 10/10/2017. Joint proposed production schedule due by 10/25/2017. (dot) (Entered: 09/01/2017)
09/18/2017		Case directly reassigned to Judge Timothy J. Kelly. Judge Colleen Kollar-Kotelly is no longer assigned to the case. (ztnr) (Entered: 09/18/2017)
10/25/2017	<u>16</u>	Joint STATUS REPORT and Proposed Schedule by DEPARTMENT OF JUSTICE, NATIONAL SECURITY AGENCY, OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE. (Motgi, Anjali) (Entered: 10/25/2017)
11/02/2017	<u>17</u>	Case randomly reassigned to Judge Rudolph Contreras. Judge Timothy J. Kelly is no longer assigned to the case. (ztnr) (Entered: 11/03/2017)
11/22/2017		Case directly reassigned to Judge Colleen Kollar-Kotelly. Judge Rudolph Contreras is no longer assigned to the case. (ztnr) (Entered: 11/22/2017)
12/04/2017		MINUTE ORDER: The Court has received the parties' <u>16</u> Joint Status Report and Proposed Schedule for Defendants Office of the Director of National Intelligence ("ODNI"), Department of Justice ("DOJ"), and National Security Agency ("NSA"). The parties shall abide by the following schedule. ODNI shall review for responsiveness and process for production 400 pages of potentially responsive records per month, beginning with a first production on DECEMBER 20, 2017 . ODNI shall produce all non-exempt responsive records by APRIL 2, 2018 . DOJ shall review for responsiveness and process for production 1000 potentially responsive items per month, beginning with a first production on DECEMBER 20, 2017 . DOJ shall produce all non-exempt responsive records by MAY 2, 2018 . NSA shall review for responsiveness and process responsive records on the following schedule: First production on DECEMBER 20, 2017 ; second production on MARCH 20, 2018 ; and final production on MAY 21, 2018 . NSA shall produce all non-exempt responsive records by this final production date. Signed by Judge Colleen Kollar-Kotelly on December 4, 2017. (lcckk1) (Entered: 12/04/2017)
04/13/2018	<u>18</u>	MOTION for Summary Judgment <i>against National Security Agency</i> by PROTECT DEMOCRACY PROJECT, INC. (Attachments: # <u>1</u> Memorandum in Support, # <u>2</u> Statement of Facts, # <u>3</u> Text of Proposed Order)(Abate, Michael) (Entered: 04/13/2018)
04/16/2018		MINUTE ORDER: The Court has received Plaintiff's <u>18</u> Motion for Summary Judgment Against National Security Agency. Plaintiff has not given any indication that Plaintiff intended to file such a motion, nor has the Court invited it. The Court's

		Minute Order of December 4, 2017, set forth a schedule for continued processing and production of non-exempt responsive materials by each of the three Defendants. Of particular note here, Defendant National Security Agency was to make a final production on May 21, 2018, more than five weeks beyond Plaintiff's submission of its <u>18</u> Motion on April 13, 2018. The Court expected that the parties would abide by their representation, in their <u>16</u> Joint Status Report, that they would "submit a Joint Status Report within thirty days of the final Defendant's final production." As it is now, the Court is unaware of Defendants' views of the status of this case, which may shape the most appropriate means of handling it. Accordingly, in the interest of efficient resolution of this matter, the Court shall DENY WITHOUT PREJUDICE Plaintiff's <u>18</u> Motion. The parties shall file a Joint Status Report on or before APRIL 30, 2018 , that, at a minimum, identifies the status of document productions and withholdings by each Defendant, indicates Plaintiff's view as to those productions, and proposes a briefing schedule, if applicable. The Court observes that it is strongly disinclined to resolve portions of this Freedom of Information Act case on a piecemeal basis prior to completion of all processing and production. Signed by Judge Colleen Kollar-Kotelly on April 16, 2018. (lcckk1) (Entered: 04/16/2018)
04/16/2018		Set/Reset Deadlines: Joint Status Report due by 4/30/2018. (dot) (Entered: 04/16/2018)
04/30/2018	<u>19</u>	Joint STATUS REPORT by PROTECT DEMOCRACY PROJECT, INC.. (Abate, Michael) (Entered: 04/30/2018)
05/15/2018		MINUTE ORDER: The Court has received the parties' <u>19</u> Joint Status Report and Proposed Schedule, which indicates that the parties disagree as to whether Plaintiff's motion for summary judgment against Defendant NSA should be briefed before the productions by all Defendants have been completed. While Defendants NSA and ODNI have completed their processing of Plaintiff's request, Defendant DOJ requires an additional four months to do so. Although Plaintiff identifies some basis for asserting economy in bifurcation, the Court remains of the view that it is ultimately more efficient for the Court to resolve one or more motions for summary judgment as to all Defendants at once. <i>See</i> Min. Order of Apr. 16, 2018 ("The Court observes that it is strongly disinclined to resolve portions of this Freedom of Information Act case on a piecemeal basis prior to completion of all processing and production."). Moreover, Plaintiff appears not to have sought expedited treatment for any of the FOIA requests at issue in this case. Accordingly, in an exercise of the Court's discretion to efficiently resolve this case, the Court adopts the following timeline. Defendant DOJ shall complete its processing of Plaintiff's FOIA request by SEPTEMBER 3, 2018 . Based on Plaintiff's interest in resolving this case efficiently, the Court shall, <i>sua sponte</i> , require that Defendants ODNI and DOJ share draft <i>Vaughn</i> indices with Plaintiff by SEPTEMBER 17, 2018 , unless the parties expressly agree to the contrary. The parties shall file a Joint Status Report by OCTOBER 3, 2018 , confirming the status of Defendants' productions and draft <i>Vaughn</i> indices and proposing a briefing schedule applicable to the entirety of the case. If, contrary to appearances, Plaintiff did seek expedited treatment of its FOIA requests by any of Defendants, then Plaintiff may file a notice with the Court by MAY 18, 2018 , indicating those Defendants as to which Plaintiff did seek expedited treatment and describing the resolution of any such request. Upon the filing of any such notice, the Court shall re-evaluate the aforementioned deadlines. Signed by Judge Colleen Kollar-Kotelly on May 15, 2018. (lcckk1) (Entered: 05/15/2018)
05/15/2018		Set/Reset Deadlines: Joint Status Report due by 10/3/2018, confirming the status of Defendants' productions and draft <i>Vaughn</i> indices and proposing a briefing schedule applicable to the entirety of the case. (dot) (Entered: 05/16/2018)
06/19/2018	<u>20</u>	Joint MOTION to Dismiss <i>Certain Defendants</i> , Joint MOTION to Modify <i>Scheduling Order</i> by PROTECT DEMOCRACY PROJECT, INC. (Attachments: # <u>1</u> Text of Proposed Order)(Abate, Michael) (Entered: 06/19/2018)
06/20/2018	<u>21</u>	ORDER. Defendants DOJ and ODNI are DISMISSED from this lawsuit and relieved of all remaining obligations under existing scheduling orders established by the Court. See Order for further details. Signed by Judge Colleen Kollar-Kotelly on June 20, 2018. (lcckk1) (Entered: 06/20/2018)

06/20/2018	<u>22</u>	SCHEDULING AND PROCEDURES ORDER. Signed by Judge Colleen Kollar-Kotelly on June 20, 2018. (lcckk1) (Entered: 06/20/2018)
06/20/2018		Set/Reset Deadlines: Defendant's Cross Motion due by 8/9/2018; Response to Cross Motion due by 8/30/2018; Reply to Cross Motions due by 9/14/2018. Plaintiff's Summary Judgment Motion due by 6/25/2018; Response to Motion for Summary Judgment due by 8/9/2018; Reply to Motion for Summary Judgment due by 8/30/2018. (dot) (Entered: 06/21/2018)
06/25/2018	<u>23</u>	MOTION for Summary Judgment by PROTECT DEMOCRACY PROJECT, INC. (Attachments: # <u>1</u> Memorandum in Support, # <u>2</u> Statement of Facts, # <u>3</u> Text of Proposed Order)(Abate, Michael) (Entered: 06/25/2018)
08/09/2018	<u>24</u>	Cross MOTION for Summary Judgment by DEPARTMENT OF JUSTICE, NATIONAL SECURITY AGENCY, OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE (Attachments: # <u>1</u> Declaration of Steven E. Thompson, # <u>2</u> Exhibit to Thompson Declaration, # <u>3</u> Text of Proposed Order)(Motgi, Anjali) (Entered: 08/09/2018)
08/09/2018	<u>25</u>	RESPONSE re <u>18</u> MOTION for Summary Judgment <i>against National Security Agency (Opposition)</i> filed by DEPARTMENT OF JUSTICE, NATIONAL SECURITY AGENCY, OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE. (Attachments: # <u>1</u> Declaration of Steven E. Thompson, # <u>2</u> Exhibit to)(Motgi, Anjali) (Entered: 08/09/2018)
08/30/2018	<u>26</u>	REPLY to opposition to motion re <u>23</u> MOTION for Summary Judgment filed by PROTECT DEMOCRACY PROJECT, INC.. (Abate, Michael) (Entered: 08/30/2018)
08/30/2018	<u>27</u>	RESPONSE re <u>24</u> Cross MOTION for Summary Judgment filed by PROTECT DEMOCRACY PROJECT, INC.. (Abate, Michael) (Entered: 08/30/2018)
09/13/2018	<u>28</u>	REPLY to opposition to motion re <u>24</u> Cross MOTION for Summary Judgment filed by NATIONAL SECURITY AGENCY. (Motgi, Anjali) (Entered: 09/13/2018)
04/25/2019	<u>29</u>	Joint MOTION to Modify <i>Case Schedule</i> by PROTECT DEMOCRACY PROJECT, INC. (Attachments: # <u>1</u> Exhibit Proposed Order)(Abate, Michael) (Entered: 04/25/2019)
04/26/2019	<u>30</u>	ORDER. The parties' Motion to Modify Case Schedule is GRANTED. Defendant U.S. National Security Agency shall have until JUNE 10, 2019 , to inform this Court and Plaintiff The Protect Democracy Project, Inc. whether it maintains its <i>Glomar</i> response in this case. See Order for further details. Signed by Judge Colleen Kollar-Kotelly on April 26, 2019. (lcckk1) (Entered: 04/26/2019)
04/26/2019		Set/Reset Deadlines: Defendant U.S. National Security Agency shall have until JUNE 10, 2019, to inform this Court and Plaintiff The Protect Democracy Project, Inc. whether it maintains its <i>Glomar</i> response in this case. (dot) (Entered: 04/26/2019)
06/10/2019	<u>31</u>	NOTICE of Withdrawal of <i>Glomar Response</i> by NATIONAL SECURITY AGENCY (Motgi, Anjali) (Entered: 06/10/2019)
06/11/2019		MINUTE ORDER: The Court has received Defendant U.S. National Security Agency's <u>31</u> Notice of Withdrawal of <i>Glomar Response</i> , which indicates that in addition to withdrawing its <i>Glomar</i> response, Defendant has "conducted searches for, and located, all responsive materials, and has applied redactions, pursuant to the FOIA's exemptions, where appropriate," to the materials responsive to Plaintiff's Second Amended Request. Defendant has also "referred the responsive materials for a consultation to account for third-party equities but has not yet received a response regarding those equities." Because the parties' pending summary judgment cross-motions turn on Defendant's since-withdrawn <i>Glomar</i> response, the Court shall DENY WITHOUT PREJUDICE Plaintiff's <u>23</u> Motion for Summary Judgment and Defendant's <u>24</u> Cross-Motion for Summary Judgment. Defendant expects that its consultation regarding referred documents will be finished by June 21, 2019. Accordingly, the parties shall confer and submit a Joint Status Report by JUNE 28, 2019 , proposing a schedule for further proceedings in this case. Signed by Judge Colleen Kollar-Kotelly on June 11, 2019. (lcckk1) (Entered: 06/11/2019)

06/11/2019		Set/Reset Deadlines: Joint Status Report due by 6/28/2019, proposing a schedule for further proceedings in this case. (dot) (Entered: 06/12/2019)
06/28/2019	<u>32</u>	Joint STATUS REPORT by PROTECT DEMOCRACY PROJECT, INC.. (Abate, Michael) (Entered: 06/28/2019)
07/03/2019		MINUTE ORDER: The Court has received the parties' <u>32</u> Joint Status Report, which sets forth the parties' divergent proposed schedules for briefing renewed cross-motions for summary judgment. Plaintiff has not persuaded the Court that Defendant U.S. National Security Agency's sixty-day proposal for its Motion for Summary Judgment is unreasonable. Accordingly, the Court shall adopt a sixty-day timeline in the accompanying Scheduling and Procedures Order. However, in light of Plaintiff's interest in expediency, the Court shall in that Scheduling and Procedures Order adopt a condensed timeline for Plaintiff's response and Cross-Motion for Summary Judgment, as well as the parties' further briefing. Upon receiving Defendant's Motion for Summary Judgment, Plaintiff may request an extension of time if the deadline for its response and Cross-Motion for Summary Judgment is insufficient to address Defendant's arguments. Signed by Judge Colleen Kollar-Kotelly on July 3, 2019. (lcckk1) (Entered: 07/03/2019)
07/03/2019	<u>33</u>	SCHEDULING AND PROCEDURES ORDER. Signed by Judge Colleen Kollar-Kotelly on July 3, 2019. (lcckk1) (Entered: 07/03/2019)
07/03/2019		Set/Reset Deadlines: Plaintiff's Cross Motion due by 9/26/2019. Response to Cross Motion due by 10/28/2019. Reply to Cross Motion due by 11/12/2019. Defendant's Summary Judgment Motion due by 8/27/2019. Response to Motion for Summary Judgment due by 9/26/2019. Reply to Motion for Summary Judgment due by 10/28/2019. (dot) (Entered: 07/05/2019)
08/27/2019	<u>34</u>	MOTION for Summary Judgment by NATIONAL SECURITY AGENCY (Attachments: # <u>1</u> Declaration of Linda M. Kiyosaki)(Motgi, Anjali) (Entered: 08/27/2019)
09/23/2019	<u>35</u>	Memorandum in opposition to re <u>34</u> MOTION for Summary Judgment filed by PROTECT DEMOCRACY PROJECT, INC.. (Attachments: # <u>1</u> Statement of Facts)(Abate, Michael) (Entered: 09/23/2019)
09/23/2019	<u>36</u>	Cross MOTION for Summary Judgment by PROTECT DEMOCRACY PROJECT, INC. (Attachments: # <u>1</u> Statement of Facts, # <u>2</u> Text of Proposed Order)(Abate, Michael) (Entered: 09/23/2019)